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FM AMEMBASSY JAKARTA
TO RUEHC/SECSTATE WASHDC IMMEDIATE 2308
INFO RUCNARF/ASEAN REGIONAL FORUM COLLECTIVE PRIORITY
RHHJJPI/USPACOM HONOLULU HI
RHEHNSC/NSC WASHDC
RUEAIIA/CIA WASHDC
RUEAWJB/DEPT OF JUSTICE WASHDC

UNCLAS SECTION 01 OF 02 JAKARTA 000824

SIPDIS

DEPT FOR EAP, EAP/MTS, EAP/MLS, EAP/RSP, L, L/DL FOR
DICKERSON

E.O. 12958: N/A

TAGS: PREL PGOV KLIG ID

SUBJECT: GOI QUESTIONS USE OF HUMAN RIGHTS REPORT IN U.S.
LEGAL PROCEEDING

REF: A. JAKARTA 730
 1B. JAKARTA 692

11. (U) This message is Sensitive But Unclassified -- Please
handle accordingly.

12. (U) This is an Action Request -- Please see paras 7-8.

13. (SBU) SUMMARY: Mission has received a diplomatic note
formally complaining about the use of the 2003 U.S.
Department of State Country Report on Human Rights Practices
in a U.S. court proceeding (the court in question has
apparently allowed provisions of the report related to
corruption in the Indonesian legal system to be cited as
evidence). The GOI believes that the use of the report in
court is inappropriate and it asks that the USG issue a
"statement of interest" regarding the matter. Mission
requests the Department's guidance in responding to the
diplomatic note (the text of which is attached below). END
SUMMARY.

BACKGROUND -- A GOI STATEMENT OF THE FACTS

14. (SBU) The GOI has sent Mission a diplomatic note dated
April 30, 2009, asserting the following information: Amcit
businessman Michael S. Fox had previously sued Bank
Mandiri--a state owned enterprise--in Indonesia over
non-payment of a letter of credit during the 1998 Asian
financial crisis. Bank Mandiri said it did not pay the
letter, valued at \$5.3 million, due to discrepancies between
the machinery that Fox's company delivered and that which had
been ordered. The Indonesian court ruled in favor of Bank
Mandiri. The plaintiff filed an appeal to the Indonesian
Supreme Court. The plaintiff could have (but did not) filed
a complaint with the Indonesian Judicial Commission, which is
responsible for monitoring the activities of the courts and
ensuring an independent judiciary.

15. (SBU) The GOI narrative continues: Fox then brought suit
in a U.S. Bankruptcy Court. He alleged that he could not
receive a favorable outcome in Indonesian courts because of
systemic corruption in the country's legal system. A U.S.
court is said to have accepted the case in part because the
2003 U.S. Department of State Country Report on Human Rights
Practices substantiated the plaintiff's claims regarding the
Indonesian legal system. The case is currently pending.

RAISING CONCERN; SEEKING USG HELP

16. (SBU) The Indonesian government's dipnote questions the
use of the Human Rights Report as evidence in the U.S. legal
proceeding. Per the dipnote, the GOI is concerned that use
of the Human Rights Report sets a negative precedent. The

GOI urges that the USG issue a "statement of interest" regarding the matter.

ACTION REQUEST

¶7. (SBU) Mission requests that the Department provide guidance regarding the diplomatic note contained below. On the policy side, we note that the Indonesian government seems to be genuinely upset over this matter to the extent that its note asserts that bilateral relations could somehow be "endangered" if the USG does not provide assistance.

¶8. (SBU) We note that while some American companies have had difficulties in Indonesian courts, the Indonesian Supreme Court has recently made some positive judgments in favor of U.S. companies operating in Indonesia. Notable cases include the TIME magazine case (ref B) and the Newmont Buyat Bay case (ref A). Mission is sending scanned copies of all documents it received from the GOI re this case to EAP/MTS. (Note: We understand that U.S. courts have also cited the Human Rights Report in regard to asylum cases on multiple occasions. This is the first time we have heard of such a citation in a commercial dispute, however.) END ACTION REQUEST.

TEXT OF DIPNOTE

¶9. (U) GOI Diplomatic note regarding Fox v. Bank Mandiri:

Begin Text:

No. D.00381/VY2009/58

JAKARTA 00000824 002 OF 002

The Department of Foreign Affairs presents its compliments to the Embassy of the United States of America and has the honor to convey (the following) on the ongoing case of Fox v. Bank Mandiri (a brief summary of the case is herewith attached) as follows:

Michael S. Fox, as Trustee and Successor-in interest of Perry H. Koplik & Sons, who had exhausted all legal avenues in Indonesia and finally lost the case, filed lawsuit in the United States in order to get favourable judgment. As a basis of its argument, Fox cites the United States Department of State Country Report on Human Rights Practices 2003.

The Government of Indonesia is deeply concerned regarding the approach taken by the US Court that considered the Report as an admissible document and decided to adjudicate the case largely on the basis of views expressed in the said document.

The Court came to a conclusion that the Indonesian judicial system had been shown to have systemic corruption.⁸

In our view, this creates dangerous precedents both in the United States as well as in Indonesia because any persons can just simply cite any publicly available documents in order to quash a decision by the highest court in either jurisdiction that is considered unfavorable to a particular disputing party.

Therefore within this context, the Department impress upon the Government of the United States to consider issuing a statement of interest on this matter for the purpose of serving the interest of the excellent bilateral relations between Indonesia and the United States, which could be endangered by such an approach.

The Department of Foreign Affairs of the Republic of Indonesia avails itself of this opportunity to renew to the Embassy of the United States of America the assurance of its highest consideration.

Jakarta, 30 April 2009

End Text.

